

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs October 24, 2006

ROY ALVIN JENKINS, JR. v. STATE OF TENNESSEE

Direct Appeal from the Criminal Court for Cumberland County
No. 3187-B Leon Burns, Jr., Judge

No. E2006-01146-CCA-R3-HC - Filed February 13, 2007

The pro se petitioner, Roy Alvin Jenkins, appeals from the summary dismissal by the trial court of his "Motion for Modification of Illegal Sentence." We dismiss this appeal holding that Tennessee Rule of Appellate Procedure 3(b) does not authorize a direct appeal of a dismissal of a motion to correct an illegal sentence.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

JOHN EVERETT WILLIAMS, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Roy Alvin Jenkins, Jr., Wartburg, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; Garry G. Brown, District Attorney General; and Gary McKenzie, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The petitioner contends that the trial court erred in sentencing him to twenty-five years in confinement, in violation of Blakely v. Washington, 542 U.S. 296 (2004).

The petitioner pled guilty to second degree murder (a Class A felony) and, on June 1, 1994, was sentenced as a Range I offender to twenty-five years in the Tennessee Department of Correction. On appeal, he contends that he was improperly sentenced by the trial court to the maximum in the range because his record contained no prior felonies.

We conclude that this court is without jurisdiction to consider the issue raised by this petitioner, and we dismiss the appeal. Moody v. State, 160 S.W.3d 512 (Tenn. 2005), stands for the principle that Tennessee Rule of Appellate Procedure 3(b) does not authorize a direct appeal of a dismissal of a motion to correct an illegal sentence. Further, in State v. Gomez, 163 S.W.3d 632

(Tenn. 2005), our supreme court held that Tennessee's sentencing structure does not conflict with the holdings of Blakely.

Accordingly, the appeal is dismissed.

JOHN EVERETT WILLIAMS, JUDGE